Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of MCI COMMUNICATIONS SERVICES, INC., Complainant, v. WIDE VOICE, LLC, Defendant.	Proceeding Number 19-121 Bureau ID Number EB-19-MD-003

WIDE VOICE, LLC'S ANSWER TO NUMBERED PARAGRAPHS OF FORMAL COMPLAINT OF MCI COMMUNICATIONS SERVICES, INC.

Pursuant to 47 C.F.R. § 1.724, and the Commission's Notice of Formal Complaint dated June 18, 2019, Defendant Wide Voice, LLC ("Wide Voice") hereby provides this Answer to Numbered Paragraphs, along with a Brief and Legal Analysis ("Wide Voice Legal Analysis") in answer to the Formal Complaint of MCI Communications Services, Inc. ("Verizon"). To the extent Verizon attempted to make any allegations outside of the numbered paragraphs in its Complaint, *e.g.*, in various footnotes, these averments are made in violation of 47 C.F.R. § 1.721(d) and Wide Voice is not required to respond. To the extent Wide Voice does not explicitly admit to any specific allegation, including those improperly included in footnotes, those allegations are denied.

1. Wide Voice admits that Verizon filed a Formal Complaint but denies any and all liability alleged by Verizon, including that Wide Voice violated "§§ 201 and 203

of the Act," and denies any remaining allegations in paragraph 1 for the reasons set forth in its accompanying legal memorandum.

2. For the reasons stated in the Wide Voice Legal Analysis, section II, Wide Voice denies the allegation in paragraph 2.

3. Paragraph 3 sets forth legal conclusions to which no response is required. Verizon offers a citation to Wide Voice's tariff, which speaks for itself. To the extent a response is required, for the reasons stated in the Wide Voice Legal Analysis, sections II.A-C, E, Wide Voice denies that the "CLEC Benchmark Rule" requires Wide Voice to charge rates different from those set forth in its Tariff. Wide Voice also denies that its tariff is unlawful or ambiguous for the reasons set forth in the Wide Voice Legal Analysis, sections II.A.-C. Wide Voice filed its tariff in accordance with 47 C.F.R. §§ 61.26(b)(1), 51.907(g)(2), 51.907(h).

4. Paragraph 4 sets forth legal conclusions to which no response is required. To the extent a response is required, Wide Voice denies that some of the traffic at issue in this Formal Complaint traversed a Wide Voice tandem that was routed to an end office that is owned by an affiliate of Wide Voice. For the reasons set forth in the Wide Voice Legal Analysis, section I.C, Wide Voice denies that it has violated and continues to violate 47 C.F.R. §§ 61.26(b)(1), 51.907(g)(2), 51.907(h) or that it violated its own tariff as alleged in paragraph 4 of Verizon's complaint.

5. Paragraph 5 sets forth legal conclusions to which no response is required. To the extent a response is required, Wide Voice denies the allegations contained in paragraph 5 that the Tariff contains "two unlawful dispute provisions." As set forth in

the Wide Voice Legal Analysis, section I.F, Wide Voice's dispute language matches word-for-word long-accepted, FCC-approved, industry standard language. In a bizarre line of reasoning, Verizon identifies the *Northern Valley Order*[1] and the associated facts *in support of* their position. The opposite is true. The Northern Valley tariff case fully supports Wide Voice's dispute provisions.

6. For the reasons stated in the Wide Voice Legal Analysis, section II, Wide Voice denies that Verizon is entitled to any damages. As explained in the Wide Voice Legal Analysis, section II, Wide Voice denies that it has engaged in any alleged unlawful, unreasonable, or discriminatory conduct under Section 47 U.S.C. § 201, or any other relevant provisions of the Act. Although the Commission need not decide any of these issues because Wide Voice has not violated any provision of the Act, Wide Voice denies that Verizon is entitled to damages. Wide Voice denies that Verizon paid any charges in excess of the lawful rate. Wide Voice also answers that all requests for a "declaratory ruling" should be struck. Verizon has filed a tariff complaint subject to the 5-month deadline and all such non-tariff based requests should be struck. Any remaining allegations in paragraph 6 are denied.

7. Wide Voice admits the allegation in paragraph 7.

8. Wide Voice denies the allegations in paragraph 8 for the reasons set forth in detail in section II of the Wide Voice Legal Analysis. Wide Voice also answers that all

[1] *Sprint Commc'ns Co. v. N. Valley Commc'ns, LLC* ("N. Valley Order"), 26 FCC Rcd 10780 (FCC 2011).

requests for a "declaratory ruling" should be struck. Verizon has filed a tariff complaint subject to the 5-month deadline and all such non-tariff based requests should be struck.

9. Wide Voice admits that Verizon has requested to bifurcate the issue of damages but denies that Verizon is entitled to any damages. Because Verizon has decided to bifurcate its liability claims, the Commission should not in this stage of the proceeding decide any issue related to damages, nor should it issue any decision on the alleged affiliation which Verizon contends exist.

10. Paragraph 10 is not directed at Wide Voice, and as result no response is required.

11. Wide Voice admits the allegations contained in paragraph 11.

12. Wide Voice admits the allegations contained in paragraph 12.

13. Wide Voice admits the allegations contained in paragraph 13.

14. Wide Voice admits the allegations contained in paragraph 14.

15. Wide Voice denies that Wide Voice Communications, Inc. is a relevant non-party. Wide Voice answers that the documents speak for themselves and denies that any information as to Wide Voice Communications, Inc. is relevant to this proceeding and, further, denies the allegations contained in paragraph 15 to the extent they mischaracterize and otherwise misstate public documents. Specifically, Wide Voice denies that Patrick Chicas currently owns 10% of Wide Voice, LLC. Wide Voice also specifically denies that allegations contained in paragraph 15 that rely on the unsubstantiated allegations of former employee Jeffrey Holoubek. Wide Voice is without is without knowledge as to what Wide Voice Communications, Inc. owns.

16. Wide Voice denies that Native American Telecom, LLC is a relevant non-party. Wide Voice answers that the documents speak for themselves and denies that any information as to Native American Telecom, LLC is relevant to this proceeding and, further, denies the allegations contained in paragraph 16 to the extent they mischaracterize and otherwise misstate public documents. Wide Voice is without knowledge as to the directors, or owners of Native American Telecom, LLC. Wide Voice denies that Jeffrey Holoubek was fired from any position at Wide Voice.

17. Wide Voice denies that Native American Telecom- Pine Ridge, LLC is a relevant non-party. Wide Voice answers that the documents speak for themselves and denies that any information as to Native American Telecom – Pine Ridge, LLC is relevant to this proceeding and, further, denies the allegations contained in paragraph 17 to the extent they mischaracterize and otherwise misstate public documents.

18. Wide Voice denies that Wide Voice Communications, Inc., Native American Telecom, LLC and Native American Telecom – Pine Ridge, LLC are relevant non-parties. Wide Voice answers that the documents speak for themselves and denies that any information as to these entities is relevant to this proceeding and, further, denies the allegations contained in paragraph 18 to the extent they mischaracterize and otherwise misstate public documents, or the information is outdated. Wide Voice denies the remaining allegations in paragraph 18 for the reasons set forth in the Wide Voice Legal Analysis.

19. Wide Voice admits that Verizon's Formal Complaint makes allegations concerning the "lawfulness of a charge, classification, regulation, or practice" and that

the 5-month investigation timeline applies to Verizon's Formal Complaint. Wide Voice admits that paragraph 19 properly describes the allegations in Verizon's Formal Complaint.

20. Paragraph 20 characterizes an FCC order and is not directed at Wide Voice. As a result, no response is required.

21. Paragraph 21 characterizes an FCC order and is not directed at Wide Voice. As a result, no response is required.

22. As a general matter, Wide Voice admits paragraph 22.

23. Paragraph 23 purports to quote an FCC regulation, which speaks for itself and to which no response is required.

24. Paragraph 24 states legal conclusions to which no response is required.

25. Paragraph 25 states legal conclusions to which no response is required.

26. Paragraph 26 purports to quote an FCC regulation, which speaks for itself and to which no response is required.

27. Paragraph 27 states legal conclusions to which no response is required.

28. Paragraph 28 states legal conclusions to which no response is required. To the extent a response is required, and for the reasons stated in the Wide Voice Legal Analysis, sections II.B-C, Wide Voice denies the manner in which Verizon believes that the CLEC Benchmarking Rule (47 C.F.R. § 61.26) requires Wide Voice to step down rates under section 51.907. Wide Voice does admit that Wide Voice is required to comply with the requirements of sections 61.26 and 51.907.

29. Paragraph 29 characterizes an FCC order and is not directed at Wide Voice. As a result, no response is required. To the extent a response is required and for the reasons stated in the Wide Voice Legal Analysis, sections II.B-C, Wide Voice denies the manner in which Verizon believes that the CLEC Benchmarking Rule (47 C.F.R. § 61.26) requires Wide Voice to step down rates under section 51.907.

30. Paragraph 30 purports to quote an FCC regulation, which speaks for itself and to which no response is required.

31. Paragraph 31 purports to quote an FCC order, which speaks for itself and to which no response is required.

32. Paragraph 32 purports to quote an FCC regulation, which speaks for itself and to which no response is required.

33. Paragraph 33 purports to quote an FCC order, which speaks for itself and to which no response is required.

34. Paragraph 34 purports to quote an amicus brief filed by the FCC's Office of General Counsel, which speaks for itself and to which no response is required.

35. Paragraph 35 contains a series of legal conclusions to which no response is required. To the extent a response is required, Wide Voice denies that its tariff is "void *ab initio*" for the reasons set forth in the Wide Voice Legal Analysis.

36. Wide Voice admits the allegations contained in paragraph 36.

37. Wide Voice admits the allegations contained in paragraph 37.

38. Wide Voice admits the allegations contained in paragraph 38.

39. Wide Voice admits the allegations contained in paragraph 39.

40. Wide Voice admits the allegations contained in paragraph 40.

41. Wide Voice admits the allegations contained in paragraph 41.

42. Wide Voice admits the allegations contained in paragraph 42.

43. Paragraph 43 contains a series of legal conclusions to which no response is required. To the extent a response is required and for the reasons set forth the in the Wide Voice Legal Analysis, section II.D, the Commission's orders and rules permit Wide Voice to charge its standard rate for all traffic that both traverses its tandem switch and terminates at a non price cap LEC Wide Voice owned end office. Wide Voice denies the remaining allegations in paragraph 43 for the reasons set forth in the Wide Voice Legal Analysis.

44. Paragraph 44 purports to characterize Wide Voice's tariff, which speaks for itself.

45. Paragraph 45 purports to characterize Wide Voice's tariff, which speaks for itself.

46. Paragraph 46 contains legal conclusions to which no response is required. To the extent a response is required, Wide Voice admits that its tariff contains dispute resolution provisions that have been approved by the Commission.

47. Paragraph 47 provides a quote from Wide Voice's tariff, which speaks for itself.

48. Paragraph 48 provides a quote from Wide Voice's tariff, which speaks for itself.

49. Wide Voice is without knowledge or information sufficient to form a belief as to the truth of Verizon's statement concerning its alleged internal audit and any findings of its alleged internal audit. Wide Voice denies that it billed Verizon "suspiciously" or "improperly."

50. Wide Voice admits that it received a letter from Verizon dated November 14, 2018 and it responded as alleged in paragraph 50.

51. Wide Voice admits that it received a "dispute notification" from Verizon on December 18, 2018; however, Verizon stopped paying Wide Voice in September 2017, over a year prior to it sending its "dispute notification."

52. Wide admits the allegations contained in paragraph 52.

53. Wide Voice denies the allegations contained in paragraph 53 to the extent they misrepresent when Verizon stopped paying Wide Voice. Verizon stopped paying Wide Voice's invoices in full starting in September 2017. Wide Voice admits that Verizon also failed to pay 2018 and all 2019 invoices.

54. Wide Voice denies that any Verizon traffic was routed to a Wide Voice affiliate's end office. Wide Voice admits that the traffic at issue traversed a Wide Voice tandem before being routed through a Wide Voice end office. Wide Voice denies that Native American Telecom, LLC and Native American Telecom-Pine Ridge, LLC are Wide Voice affiliates.

55. Wide Voice denies that any Verizon traffic was routed to a Wide Voice affiliate's end office. Wide Voice admits that the traffic at issue traversed a Wide Voice tandem before being routed through a Wide Voice end office. Wide Voice denies that

Native American Telecom, LLC and Native American Telecom-Pine Ridge, LLC are Wide Voice affiliates.

56. Wide Voice admits the allegations contained in paragraph 56.

57. Paragraph 57 contains legal conclusions to which no response is required. To the extent a response is required, Wide Voice admits that Wide Voice submitted a proposed tariff filing on April 10, 2019 and denies the allegations in paragraph 57 about its proposed tariff filing. Wide Voice admits that Verizon and AT&T challenged Wide Voice's proposed filing and that Wide Voice withdrew the tariff filing.

58. Paragraph 58 contains legal conclusions to which no response is required. To the extent a response is required and for the reasons set forth in the Wide Voice Legal Analysis, sections II.A-E, Wide Voice denies the allegations contained in paragraph 58.

59. Paragraph 59 contains legal conclusions to which no response is required. To the extent a response is required and for the reasons set forth in the Wide Voice Legal Analysis, sections II.A-C, Wide Voice denies the allegations contained in paragraph 59.

60. Paragraph 60 contains legal conclusions to which no response is required. To the extent a response is required and for the reasons set forth in the Wide Voice Legal Analysis, sections II.A-E, Wide Voice denies the allegations contained in paragraph 60.

61. Paragraph 61 contains legal conclusions to which no response is required. To the extent a response is required, Wide Voice denies the allegations contained in paragraph 61.

62. Paragraph 62 contains legal conclusions to which no response is required. To the extent a response is required and for the reasons set forth in the Wide Voice Legal Analysis, section II.C, Wide Voice denies the allegations contained in paragraph 62.

63. Paragraph 63 contains legal conclusions to which no response is required. To the extent a response is required and for the reasons set forth in the Wide Voice Legal Analysis, section II.C, Wide Voice denies the allegations contained in paragraph 63. Wide Voice denies that its tariff is ambiguous or that the Commission should find it ambiguous; Wide Voice's tariff speaks for itself.

64. Paragraph 64 contains legal conclusions to which no response is required. To the extent a response is required and for the reasons set forth in the Wide Voice Legal Analysis, section I.C, II.A-C, E, Wide Voice denies the allegations contained in paragraph 64.

65. Paragraph 65 contains legal conclusions to which no response is required. To the extent a response is required and for the reasons set forth in the Wide Voice Legal Analysis, section II.F, Wide Voice denies the allegations contained in paragraph 65.

66. Paragraph 66 contains legal conclusions to which no response is required.

67. Paragraph 67 purports to characterize Wide Voice's tariff, which speaks for itself.

68. Paragraph 68 purports to characterize Wide Voice's tariff, which speaks for itself.

69. Paragraph 69 contains legal conclusions to which no response is required. To the extent a response is required, Wide Voice denies the allegations contained in paragraph 69 for the reasons set forth in the Wide Voice Legal Analysis.

70. Paragraph 70 purports to characterize Wide Voice's tariff, which speaks for itself.

71. Paragraph 71 contains legal conclusion to which no response is required. To the extent a response is required, Wide Voice denies the allegations contained in paragraph 71. Northern Valley re-filed its tariff on July 26, 2011, in response to *Northern Valley Order* and after working with FCC Staff to arrive at acceptable provisions. Northern Valley's tariff specifically identifies these revised sections as "(x) Issued under authority of Commission Order 11-111 to bring tariff material into compliance with the Sprint v Northern Valley Order."[2] It is these revised provisions – provisions that have been revised pursuant to the *Northern Valley Order* prepared under the guidance of FCC Staff permitted in effect on August 10, 2011, and still in effect today after nearly eight years – that Wide Voice has included in its tariff.

[2] WV_000157.

72. Paragraph 72 contains legal conclusion to which no response is required. To the extent a response is required Wide Voice denies the allegations contained in paragraph 72 for the reasons set forth in the Wide Voice Legal Analysis.

73. Paragraph 73 contains legal conclusion to which no response is required. To the extent a response is required, Wide Voice denies the allegations contained in paragraph 73 for the reasons set forth in the Wide Voice Legal Analysis.

74. Wide Voice admits that it has cited a number of different bases in response to Verizon's alleged disputes and failures to pay Wide Voice.

COUNT I
(Section 201, 47 U.S.C. § 201, Unjust and Unreasonable Practice)

75. Wide Voice repeats and realleges each and every statement in paragraphs 1 through 74 of this Answer.

76. Paragraph 76 contains purports to quote a statutory provision, which speaks for itself.

77. Paragraph 77 contains legal conclusions to which no response is required. To the extent a response is required, Wide Voice denies the allegations contained in paragraph 77 for the reasons set forth in the Wide Voice Legal Analysis, section II.

78. Wide Voice denies the allegations contained in paragraph 78 for the reasons set forth in the Wide Voice Legal Analysis, sections II.A-E.

79. Wide Voice denies the allegations contained in paragraph 79 for the reasons set forth in the Wide Voice Legal Analysis, sections II.A-E.

80. Wide Voice denies the allegations contained in paragraph 80 for the reasons set forth in the Wide Voice Legal Analysis, section II.F.

81. Paragraph 81 is not directed at Wide Voice, and accordingly no response is required. To the extent a response is required, Wide Voice denies that Verizon is entitled to the determination it seeks and otherwise denies the allegations contained in paragraph 81 for the reasons set forth in the Wide Voice Legal Analysis, section II.

COUNT II
(Sections 201 and 2031, 47 U.S.C. §§ 201(b), 203(c))

82. Wide Voice repeats and realleges each and every statement in paragraphs 1 through 74 of this Answer.

83. Wide Voice denies the allegations contained in paragraph 83 for the reasons set forth in the Wide Voice Legal Analysis, sections II.A-E.

84. Wide Voice denies the allegations contained in paragraph 84 for the reasons set forth in the Wide Voice Legal Analysis, sections II.A-E.

85. Wide Voice denies the allegations contained in paragraph 85 for the reasons set forth in the Wide Voice Legal Analysis, section II.

COUNT III
(Declaratory Ruling)

86. Wide Voice realleges each and every answer statement in paragraphs 1 through 74 of this Answer.

87. Paragraph 87 contains legal conclusions to which no response is required. To the extent a response is required, Wide Voice admits that it contends that Step Six and Step Seven apply when a call terminates at a price cap LEC end office and also

traverses an owned or affiliated price cap LEC tandem switch. Wide Voice admits that it continues to invoice Verizon for services it has rendered and denies that such charges are improper or unlawful.

88. Wide Voice denies the allegations contained in paragraph 88 for the reasons set forth in the Wide Voice Legal Analysis, section II. Wide Voice also answers that all requests for a "declaratory ruling" should be struck. Verizon has filed a tariff complaint subject to the 5-month deadline and all such non-tariff based requests should be struck.

89. Wide Voice denies that Verizon is entitled to the relief it seeks in paragraph 89 for the reasons set forth in the Wide Voice Legal Analysis, sections II.A-E. Wide Voice also answers that all requests for a "declaratory ruling" should be struck. Verizon has filed a tariff complaint subject to the 5-month deadline and all such non-tariff based requests should be struck.

WIDE VOICE, LLC'S AFFIRMATIVE DEFENSES

1. Verizon waived any claims related to Wide Voice's tariff because it failed to object to Wide Voice's tariff pursuant to 47 C.F.R. § 1.773.

2. Verizon breached Wide Voice's tariff by failing to follow the dispute resolution process in Wide Voice's tariff.

3. Verizon comes to the Commission with unclean hands because it engaged in unlawful self-help when it unilaterally withheld payment, refusing to make payments on Wide Voice's invoices, after receiving services from Wide Voice. *See*

Peerless Network, Inc. v. MCI Communications Services, Inc., No. 14 C 7417, 2018 U.S. Dist. LEXIS 43044, at *34-40 (N.D. Ill. Mar. 16, 2018).

4. Verizon cannot in good faith claim that Wide Voice's acted unreasonably and in violation of 47 C.F.R. §§ 51.907 and 61.26(b) when its own ILEC affiliates charge rates identical to Wide Voice.

5. Verizon is not entitled to a declaratory ruling as it did not properly submit a petition to the Commission in connection with that request pursuant to 47 C.F.R. 1.2.

DATED: July 3, 2019

WIDE VOICE, LLC

By Its Attorneys,

/s/ Lauren J. Coppola

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2019, I caused a copy of the foregoing Answer to Numbered Paragraphs of Formal Complaint of MCI Communications Services, Inc., as well as Wide Voice, LLC's Brief in Support of Answer, to be served as indicated below to the following:

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of MCI COMMUNICATIONS SERVICES, INC., Complainant, v. WIDE VOICE, LLC, Defendant.	Proceeding Number 19-121 Bureau ID Number EB-19-MD-003

WIDE VOICE, LLC'S LEGAL BRIEF IN SUPPORT OF ANSWER

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Regulations

The Formal Complaint of MCI Communications Services, Inc. ("Verizon") does not describe any basis for liability against Wide Voice, LLC ("Wide Voice") or articulate anything unlawful contained in Wide Voice's tariff. Verizon's Formal Complaint is an effort to obtain free service from Wide Voice (and, by inference, many CLECs) while at the same time paying other LECs in full for similar services. Last July, Verizon took it upon itself to stop paying Wide Voice. While withholding payment, Verizon elected to perform an audit in August 2018 that took over 3 months to complete. Subsequently, upon self-proclaiming Wide Voice's tariff as "unlawful," Verizon continued to withhold payment, causing Wide Voice extreme financial hardship, while continuing to send calls to Wide Voice. Almost one year after Verizon stopped paying Wide Voice for services rendered, under pressure from Wide Voice, Verizon filed its Formal Complaint. That Complaint asks the Commission to contort the CLEC Benchmarking Rule to require Wide Voice to step-down tandem-switched access rates to zero while the ILECs to which Wide Voice benchmarks for the same services are entitled to charge full rates (including Verizon's affiliates).

For all of the reasons articulated in detail below, there is no basis for a finding of liability against Wide Voice, and Verizon's Formal Complaint, alleging violations of Sections 201 and 203, should be dismissed. Verizon also improperly asks the Commission to issue a declaratory ruling; a request that should be struck as improper in its tariff based formal complaint.

I. FACTUAL BACKGROUND

A. The Wide Voice Tariff.

The tariff provisions challenged by Verizon in the Formal Complaint have been in place for years.[1] On July 16, 2015, Wide Voice amended its FCC Tariff No. 3 (through Transmittal No. 5) to, among other things, amend the dispute resolution provisions in § 2.10.4 (A) and (B). On July 31, 2015, the provisions in Wide Voice's FCC Tariff No. 3 became effective. Section 2.10.4 of the tariff contains the dispute provisions, which, Verizon claims are unlawful (4 years after the tariff was first filed). 2.10.4 (A) provides:

> All bills are presumed accurate, and shall be binding on the Customer unless written notice of a good faith dispute is received by the Company. For the purposes of this Section, "notice of a good faith dispute" is defined as written notice to the Company's contact within a reasonable period of time after the invoice has been issued, containing sufficient documentation to investigate the dispute, including the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed. A separate letter of dispute must be submitted for each and every individual bill that the Customer wishes to dispute.[2]

Section 2.10.4(B) provides:

> Prior to or at the time of submitting a good faith dispute, Customer shall tender payment for any undisputed amounts, as well as payment for any disputed charges relating to traffic in which the Customer transmitted an interstate telecommunications to the Company's network.[3]

Wide Voice's dispute resolution provision requiring customers to dispute within a "reasonable" time is **identical** to the provision that *resulted from* the resolution of an

[1] The Declaration of Carey Roesel, author of Wide Voice's FCC Tariff No. 3 and regulatory consultant is attached hereto as Exhibit 2 (WV_000003-6).
[2] VZ_0000066.
[3] *Id.*

FCC formal complaint against a different CLEC,[4] Northern Valley Communications, LLC ("Northern Valley") and is specifically not the complained-of language. As discussed further below, Verizon repeatedly cites the case and its findings while seeming not to realize they fully support Wide Voice's tariff revision on these points.

The heart of Verizon's complaint focuses on Wide Voice's tandem-switched access rates. On July 14, 2017, Wide Voice amended its FCC Tariff No. 3 (through Transmittal No. 7) to benchmark to the ILECs' step-down rates in accordance with the Step 6 and 7 requirements of the *Transformation Order* (hereinafter, "Tariff").[5] The Tariff added § 3.6.4 that defined the terminating Tandem-Switched Transport rate schedules under the new ILEC bifurcated structure. Section 3.6.4 of the Tariff, which is the primary focus of Verizon's Formal Complaint, states the following:

> The terminating Tandem-Switched Transport rate schedules are bifurcated into "Standard" and "Affil PCL" rates. The Affil PCL terminating Tandem-Switched Transport rates apply to terminating traffic traversing a Company Access Tandem switch when the terminating carrier is a Company-affiliated price cap carrier. All other terminating Tandem-Switched Transport traffic is subject to the Standard terminating Tandem-Switched Transport rates. "Affil PCL" terminating Tandem-Switched Transport rates are benchmarked to the price cap LEC rates which are subject to the step-down specified in Commission Rules 51.907(g)(2) and 51.907(h). "Standard" terminating Tandem-Switched Transport rates are benchmarked to the price cap LEC rates which are not subject to the step-down specified in Commission Rules 51.907(g)(2) and 51.907(h).[6]

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[4] *Sprint Commc'ns Co., L.P. v. N. Valley Commc'ns, LLC* ("N. Valley Order"), 26 FCC Rcd 10780 (FCC 2011).
[5] VZ_0000097.
[6] VZ_0000139.

The "Terminating – Affil PCL" tandem switching rate was $0.0007 until August 2, 2018, at which time it stepped down to zero. The "Terminating – Affil PCL" applies to traffic traversing a Wide Voice Access Tandem switch when the terminating carrier is a Wide Voice affiliated price cap carrier.[7] In billing its "Standard" rates, Wide Voice assessed charges pursuant to a composite rate found in §§ 3.8-3.10.[8] These rates have been in places since 2017, two years before Verizon filed its Formal Complaint. Wide Voice's benchmarking compliance provisions are not unique. Several of the CLEC access tariffs filed at the same time, in response to the Step 6 and Step 7 rate reductions, are identical, or substantially similar to, Wide Voice's filings. The CLECs with similar or identical provisions are some of largest providers of competitive tandem services in the country. Wide Voice attaches relevant excerpts from those tariffs as Exhibits 7 through 13 and 18 (WV_000244-61 and WV_000274). As is evident by only a cursory review, these CLECs have interpreted the step-down requirements vis-à-vis the Benchmarking Rule in the same manner as Wide Voice.

These rates have been in place since 2017 but Verizon only filed its Formal Complaint to challenge Wide Voice's Tariff in June 2019. (It stopped paying Wide Voice in July 2018.) Since that time, Wide Voice has been in the impossible position where initiating protracted litigation was the only way it seemed Wide Voice could resolve Verizon's unlawful self-help. Verizon did not challenge Wide Voice's Tariff when it

[7] *Id.* § 3.6.4.
[8] VZ_0000140-54.

amended in 2015,[9] 2017,[10] or 2018,[11] nor did it initiate a "dispute," as defined in the Tariff § 2.10.4,[12] until the end of 2018. Verizon's Formal Complaint raises issues that date back to the Step 6 benchmarking filings in mid-2017 (and the dispute provision dates back to 2015).[13] Verizon and others were fully aware of Wide Voice's, and other CLECs with the same provisions, benchmarking approach, and chose not to challenge them until now, on the eve of the expiration of the statute of limitations.

B. Wide Voice Invoices and Verizon's Unlawful Self-Help.

Wide Voice filed its Tariff, and all of its amendments at issue in Verizon's Formal Complaint – the dispute provisions and step-down benchmarking rate reductions –on 15 days' notice, providing Verizon with the opportunity to challenge Wide Voice's tariff before it was deemed lawful.[14] Verizon chose not to challenge the Tariff but continued to take services from Wide Voice for almost two years. At the same time Verizon continued to use the access services of Wide Voice without paying, while reselling its connection to third parties, it asked Wide Voice for increases in the capacity of the connection between the parties, demonstrating its intent to take even greater services

[9] VZ_0000050-96.
[10] VZ_0000097-166.
[11] VZ_0000167-85.
[12] VZ_0000066.
[13] In its "dispute" letters, Verizon raised other challenges to Wide Voice's rates and Tariff such as dttp charges, that it has not raised in its Formal Complaint. Wide Voice expects that any and all aspects of Wide Voice's Tariff that Verizon challenges must be resolved in this proceeding or otherwise waived. It would be a waste of Commission time and resources, as well as gamesmanship, if Verizon raised additional grounds for dispute on identical charges and tariffs after the resolution of this Formal Complaint.
[14] *See* 47 U.S.C. § 204(a)(3).

from Wide Voice without paying. To date, Verizon owes Wide Voice over $400,000, not including late payment charges.[15]

Verizon's failure to pay for tariff services, while continuing to send traffic to Wide Voice and, failing to dispute for almost 6 months, constitutes unlawful self-help. Last year, the Federal District Court for the Northern District of Illinois rebuked Verizon under similar circumstances.[16] In that case, Verizon refused to pay Peerless for eight years while it disputed Peerless' invoices. The court held that Peerless' tariff was legal, in the sense that it was "properly filed and effective during the relevant time period."[17] Verizon, according to the court, bore the burden to provide that Peerless' charges were unreasonable, and therefore unlawful.[18] During the pendency of the parties' dispute, Verizon was not authorized to "engage in self-help and unilaterally withhold payments to Peerless."[19] As the court explained, "the FCC does not approve of IXC self-help tactics."[20] Although Verizon has the right to raise legitimate challenges to Wide Voice's Tariff (it showed it knows how to do this when it filed a Petition to Challenge Wide Voice's amended tariff filings on June 20, 2019), it cannot take service with no intent to pay for that service and use "self-help" and bad faith "disputes" to withhold payment.

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[15] WV_000002 (Decl. of Andrew Nickerson ("Nickerson Decl.") ¶ 5).
[16] *See Peerless Network Inc. v. MCI Commc'ns Servs., Inc.*, No. 14 C 7417, 2018 U.S. Dist. LEXIS 43044, at *35-54 (N.D. Ill. Mar. 16, 2018).
[17] *Id.* at *51.
[18] *Id.* at *50.
[19] *Id.* at *54.
[20] *Id.* at *48.

C. The "Alleged" Affiliated Entities Are Not Affiliated.

Under the Communications Act, an affiliate is "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person."[21] Ownership, for purposes of this definition, "means to own an equity interest (or the equivalent thereof) of more than 10 percent."[22] The Commission did not adopt a separate definition of affiliate for purposes of 47 C.F.R. § 51.907.[23]

Verizon spends an absurd amount of time discussing the legal entities of Wide Voice Communications, Inc., Native American Telecom, LLC, and Native American Telecom – Pine Ridge, LLC. Verizon tries to draw connections between individuals under the guise of a Wide Voice "affiliated" end office. However, Verizon's real motivation for doing so is to somehow publicly besmirch Wide Voice and distract the Commission from Wide Voice's straightforward application of the CLEC Benchmarking Rule. Wide Voice Communications, Inc., Native American Telecom, LLC and Native American Telecom – Pine Ride, LLC are not affiliates of Wide Voice, LLC.[24] Verizon's information is wrong and widely outdated. (Most of the information referred to and cited by Verizon is over ten years old.) Wide Voice Communications, Inc., despite a similar name, is not an affiliated company.[25] It does not share a 10% owner with Wide Voice, LLC; and Andrew Nickerson, who controls and operates Wide Voice, LLC, does

[21] 47 U.S.C. § 153(2).
[22] *Id.*
[23] *See* 47 C.F.R. § 51.903.
[24] WV_000001 (Nickerson Decl. ¶¶ 2-4).
[25] *Id.*

not have any role in Wide Voice Communications, Inc.[26] Moreover, although for a short time Andrew Nickerson, the current president of Wide Voice, LLC, did act as the interim president of Native American Telecom, LLC and Native American Telecom-Pine Ridge, LLC, he stepped down from that role in early 2017 and has had no role in either company since that time.[27] Neither Native American Telecom entity shares ownership with Wide Voice, LLC.[28]

Moreover, Wide Voice's alleged affiliates are of no import at this stage in the proceeding as Verizon has chosen to bifurcate liability and damages. The only issue for the Commission to determine now is whether Wide Voice's Tariff contains tandem-switched access charges in violation of the step-down requirements and CLEC Benchmarking Rule. If the Commission agrees with Wide Voice's interpretation and application of the step-down requirements and CLEC Benchmarking Rule, it will be of no consequence if these entities are "affiliates" (which they are not) because they are **not** price cap LECs. For Verizon to pay zero, the calls it sent to Wide Voice would have needed to be terminated at a Wide Voice owned or affiliated *price cap carrier* end office. It is undisputed the traffic did not terminate to a price cap carrier. If the Commission finds that the law is unsettled, it still would have no cause to find that Wide Voice acted unreasonably, and thus, the charges Wide Voice assessed would stand. Only if the Commission agrees with Verizon, and the complaint moves to the issue of damages

[26] *Id.*
[27] *Id.*
[28] *Id.*

would the end offices "affiliates" issue have any import and may be raised at that time.[29]

II. LEGAL ANALYSIS

A. The *Transformation Order* and Step-down Requirements.

In February 2011, the Commission proposed broad, multiyear reforms to its existing intercarrier systems. The following November, after receiving comments, the Commission released its *Transformation Order*, in which it determined that a "uniform national bill-and-keep framework" would eventually be the default. [30] One element of the transition to a "bill-and-keep" arrangement in the *Transformation Order*, relevant here, requires price cap LECs to charge a step-down rate for tandem switching and transport functions when a Price Cap carrier terminates traffic to its own or affiliated price cap LEC end offices.

The *Transformation Order* adopted a "gradual and measured" "multi-year transition," for "terminating end office switching and *certain* transport rate elements."[31] As for the remainder of tandem-switching and tandem transport services, the Commission did not "specify the transition to reduce these rates" and asked for further comments.[32]

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[29] The charges for calls to the Native American Telecom entities' end offices are about 2% of the total amount Wide Voice charged. Clearly, Verizon's motivations for spending pages upon pages discussing the alleged "affiliations" are not about the merits of those charges.
[30] Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund et al.* ("*Transformation Order*"), 26 FCC RCD 17663, ¶¶ 819, 1312 (FCC 2011).
[31] *Id.* ¶¶ 35, 798. 800 (emphasis added)
[32] *Id*. ¶¶ 800, 1297-1325.

The Commission also determined that it was appropriate to adopt unique transitions for price cap carriers.[33] The Commission promulgated Section 51.907, entitled "Transition of price cap carrier access charges," that applies the step-down transition to price cap carriers.[34]

Specifically, the year six step-down, codified in Section 51.907(g)(2) , provides that "beginning July 1, 2017" price cap carriers "shall establish, for interstate and intrastate terminating traffic traversing a tandem switch that the terminating carrier or its affiliates owns, Tandem-Switched Access Service rates no greater than $0.0007 per minute." Under the year seven step-down, codified in Section 51.907(h), price cap carriers must further reduce such rates to zero by July 1, 2018.

Whether the step-down rate applies to tandem switching and transport traffic ***depends upon "the regulatory classification of the terminating carrier***."[35] The Commission expressly and unequivocally stated that the step-down rates in Sections 51.907(g)(2) and (h) "appl[y] ***only*** to tandem switching and transport traffic that terminates to a price cap carrier end office."[36]

The Commission commented and interpreted the limits of the step-down requirements for tandem-switched access charges in *Level 3 v. AT&T*. In *Level 3 v. AT&T,* Level 3 argued that AT&T's tariff violated the step-down provision for tandem

[33] *Id*. ¶ 801.
[34] 47 C.F.R. § 51.907.
[35] *Level 3 Commc'ns, LLC v. AT&T Inc.* ("Level 3 Order"), 33 FCC Rcd 2388, 2392 ¶ 17 (FCC 2018).
[36] *Id.* ¶¶ 3, 11 (emphasis added).

switching and transport charges (i.e., Sections 51.907(g)(2) and (h)). AT&T's tariff charges standard – non step-down – rates where a non-price cap carrier affiliate of AT&T terminates traffic that traversed a tandem owned by an AT&T price cap carrier. For AT&T, the non-price cap carrier affiliates included wireless (CMRS), VoIP, ***and competitive LEC affiliate*** **end offices**. Level 3 contended that regulatory identity of the end office carrier did not matter (CMRS, VoIP, or CLEC); as long as the end office carrier was an affiliate of AT&T, the tandem switching and transport charges must step-down. Level 3 argued that the reference to "terminating carrier" in Section 51.907 (g)(2) and (h) includes "a wireless carrier, VoIP provider, or CLEC."[37]

In response, AT&T contended that the term "terminating carrier" in Section 51.907 "can only be a Price Cap Carrier that owns the end office."[38] Thus, according to AT&T, the step-down prescribed "a 'rate transition [that reduce[s] tandem switching and transport charges only when the *terminating price cap carrier* also owns the tandem in the serving area.'" *Id.* (emphasis in original).[39]

The Commission agreed that AT&T's was the "reasonable interpretation" of the regulation and held that the step-down rule only applies when the price cap carrier is

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[37] WV_000103 (Formal Compl. of Level 3 Communications, LLC ¶ 34, *Level 3 Commc'ns, LLC v. AT&T Inc.*, EB Docket No. 17-227, filed Sept. 12, 2017).
[38] WV_000054 (AT&T Br. in Supp. of Answer at 22, *Level 3 Commc'ns, LLC v. AT&T Inc.*, EB Docket No. 17-227, filed Oct. 10, 2017).
[39] *Id.* AT&T even argued that it would make no sense for the rule to apply to non-price cap carriers. *Id.* (explaining that if "terminating carrier" "referred to a carrier other than the Price Cap Carrier (such as a CLEC or CMRS carrier), then the rule makes no literal sense, and under Level 3's interpretation, would already address many of the more difficult intermediate situations on which the Commission sought comment in the FNPRM (and on which it currently has asked for a refreshing of the record 'in light of developments' since 2011.")).

the "terminating carrier" and, as such, owns both the end office and the tandem switch.[40] In rendering this decision, the Commission found "valid policy reasons" for limiting the step-down to circumstances where a price cap carrier is terminating traffic (rather than an entity that is an affiliated CLEC or CMRS provider) and that the price cap carrier (or its affiliate) also owns the tandem switch. The Commission explained this limitation was necessary because:

> Applying the rule in situations where traffic is terminated by the price cap carrier's ***CLEC*** and CMRS affiliates would result in disparate treatment of tandem services depending on affiliation with the tandem owner ***rather than the regulatory classification of the terminating carrier***. Such a rule would create an unlevel playing field, violating the principle of competitive neutrality.[41]

Moreover, applying the step-down rule as Verizon advocates would be discriminatory and cause Wide Voice, and other CLECs that use their own tandem switches, competitive harm. Indeed, under Verizon's proposed step-down rule, non-price cap ILEC end offices, which owned tandem switches, are permitted to charge full rate. However, in Verizon's world, CLECs must charge zero for traffic they terminate which traversed an affiliated or owned end office. Thus, all tandem switch owners, if Verizon got its way, would be incentivized to terminate traffic to non-price cap ILEC end offices instead of doing business with CLECs.[42]

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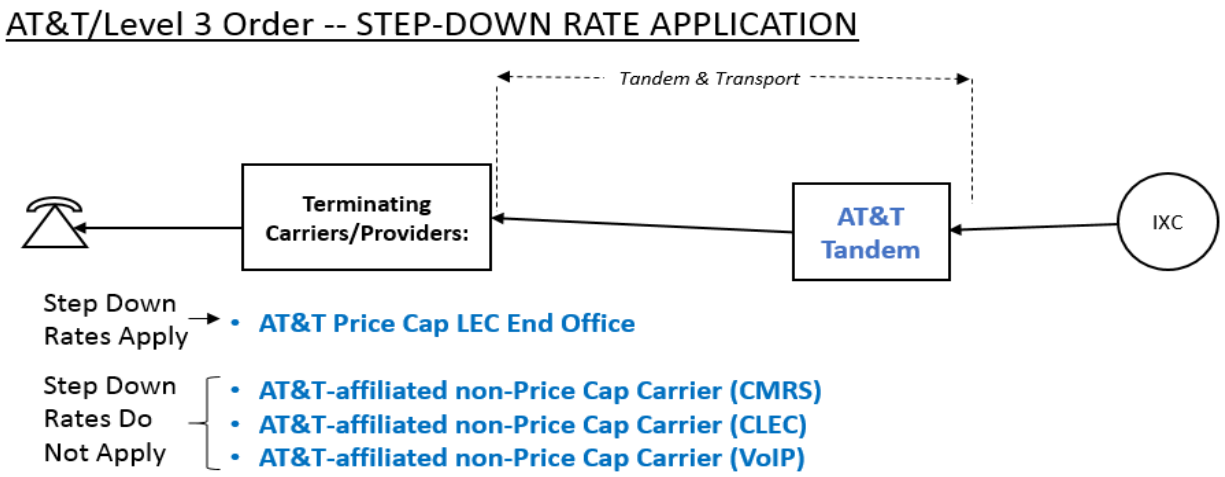
[40] *Level 3 Order*, 33 FCC Rcd at 2392 ¶ 11 (holding that "the rule applies ***only*** in situations where a 'Price Cap Carrier' is 'terminating traffic' and the price cap carrier (or its affiliate) also owns the tandem switch that the traffic traverses." (emphasis added)).

[41] *Id.* ¶ 17.

[42] Moreover, Verizon's convoluted interpretation of the Benchmarking Rule and step-down requirements discourages certain business relationships between different tandem switches and

Under the language of 47 C.F.R. §§ 51.907(g)(2) and (h), the *AT&T v. Level 3 Order*, and the *Transformation Order*, the following diagrams demonstrate when the step-down tandem switching and transport rates apply under the current law:



As demonstrated above, the Commission's (and the applicable law's) focus is the regulatory classification of the terminating carrier. The Commission made clear in the *Transformation Order* that the rules promulgated from it are not all inclusive and do not fully address "the transition to bill-and-keep tandem switching and transport traffic that a price cap carrier hands off to a non-price cap carrier affiliate for termination."[43]

While Verizon makes policy arguments of what the law should be such arguments are not appropriate in this proceeding and should be rejected. Such policy arguments do not and cannot change the meaning of the current rules as written and explained by the Commission. In an adjudicative proceeding, an agency may not alter

end offices. As a result of Verizon's self-help, Wide Voice's end office has been forced to partner with Level 3/CenturyLink for tandem switching services.

[43] *Level 3 Order*, 33 FCC Rcd at 2395-96 ¶ 19.

"an established rule defining permissible conduct which has been generally recognized and relied on throughout the industry that it regulates."[44] The Commission has "drawn a distinction between agency decisions that 'substitut[e] . . . new law for old law that was reasonably clear' and those which are merely 'new applications of existing law, clarifications, and additions.'"[45]

Rather, the Commission must evaluate Wide Voice's Tariff on the current state of the law, not what Verizon thinks the law *should* be. In the *Level 3 v AT&T* case, AT&T made the very same arguments in defending its tariff against Level 3 concerning tandem switched rates, claiming "Level 3's 'policy' arguments were misdirected."[46] AT&T forcefully argued that such policy arguments are more properly addressed to the Commission in the FNPRM;[47] and the Commission agreed.[48]

B. <u>The CLEC Benchmarking Rule.</u>

Verizon contends that Wide Voice's tandem-switched access rates violate the CLEC Benchmarking Rule and are thus, unlawful. Verizon's argument on this point misconstrues the Benchmarking Rule and is incorrect. Tellingly, a close inspection of Verizon's argument reveals that they are actually advocating that the Commission embrace discrimination and disparate treatment by continuing to entitle the ILECs to

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[44] *NLRB v. Majestic Waving Co.*, 355 F.2d 854, 860 (2d Cir. 1966).
[45] *AT&T v. FCC*, 454 F.3d 329, 332 (D.C. Cir. 2006) (quoting *Verizon Tel. Cos. v. FCC*, 269 F.3d 1098, 1109 (D.C. Cir. 2001)).
[46] WV_000064 (AT&T Br. in Supp. of Answer at 32).
[47] *Id at 32.*
[48] *Level 3 Order*, 33 FCC Rcd at 2396 ¶ 20.

whom Wide Voice benchmarks to charge their full rates while at the same time requiring Wide Voice to provide those exact services for free.

The Benchmarking Rule provides that a CLEC may tariff interstate switched exchange access charges if its rates are no higher than the rates charged for such services by the competing ILEC (the "Benchmarking Rule"). Specifically, Section 61.26(c) provides that "[t]he benchmark rate for a CLEC's switched exchange access services will be the rate charged for similar services by the *competing ILEC*."[49] But, contrary to Verizon's argument, that does not mean that Wide Voice must offer similar services for free when the competing ILEC is charging for such services. In other words, as shown below, Verizon is advocating an interpretation of the rule that has no basis in the rule itself:

- The Actual Rule: "[t]he benchmark rate for a CLEC's switched exchange access services will be at or below the rate charged for similar services by the *competing ILEC*."
- Verizon's Altered Rule: "[t]he benchmark rate for a CLEC's switched exchange access services will be $0.00, without regard to the competing ILEC's rate for the similar services."

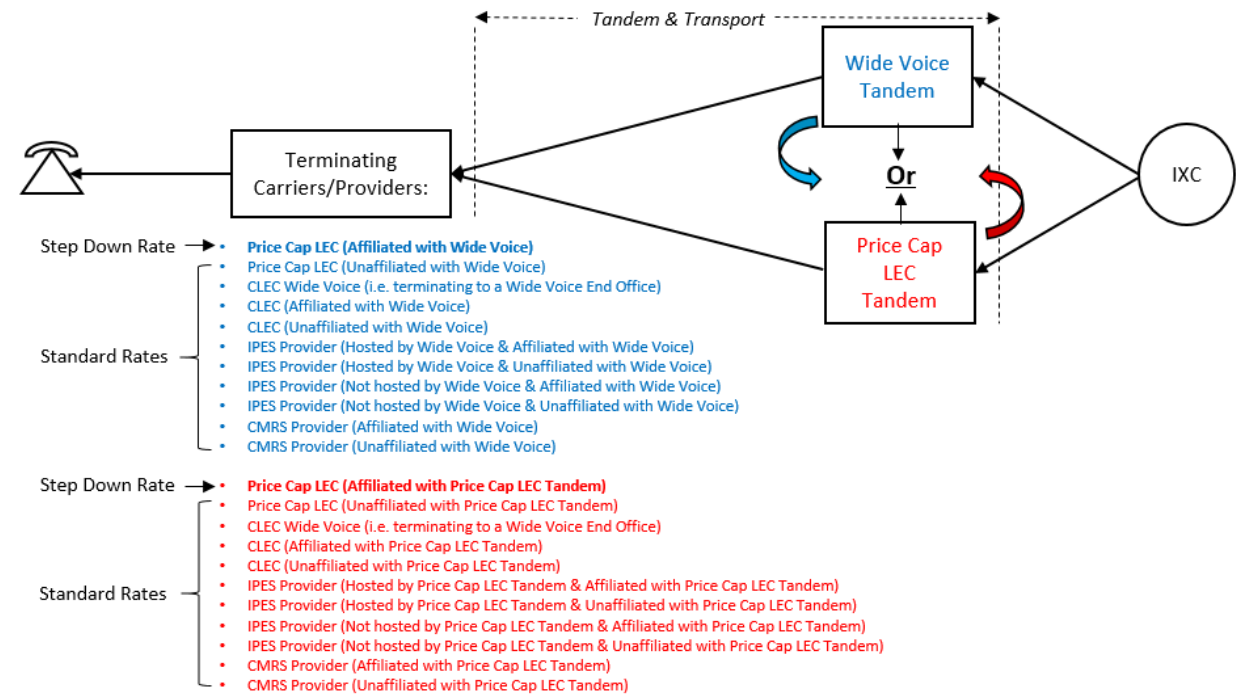
While Verizon is free to pursue such a regulation through the rulemaking process, it may not obtain any such rule change in a formal complaint proceeding.

[49] 47 C.F.R. § 61.26(c) (emphasis added). Verizon irrationally argues that the benchmark rule requires CLECs to always set a rate of $0.00 if they own the end office and the tandem switch.

In any event, for the purpose of the actual Commission regulation, the "service" at issue here is tandem-switched access. Thus, the proper inquiry is whether Wide Voice properly benchmarked its **tandem-switched access charges** to the competing ILEC **tandem-switched access charges**. Stated differently, the question of whether there is proper benchmarking turns on whether a buyer of tandem switched access service pays the same rate under Wide Voice's tariff as it would under a competing ILEC's tariff. The answer is resoundingly yes.

Wide Voice's benchmarking obligations are best illustrated in the diagrams presented below. First, replace Wide Voice as tandem with a price cap LEC as tandem (or vice versa), and second, evaluate any effects on the applicable rates either provider can assess based on the terminating, or end office, carrier/provider. In these scenarios, tandem-switched transport rates are being charged by either Wide Voice or the competing price cap LEC for delivering traffic to various terminating carriers/providers, which are defined by their regulatory classification and their affiliation with the tandem.

Therefore, the key question in determining the accuracy of Wide Voice's benchmarking approach is whether its rates are the same (or lower) for a particular terminating destination when Wide Voice is the tandem provider as when the competing price cap LEC is the tandem provider. Again, the answer is yes.



The forgoing diagram fully demonstrates that Wide Voice's tariffed tandem-switched access rates are properly benchmarked to the competing ILEC rates.

C. Wide Voice's Tandem Switched Access Charges Are Lawful.

Verizon contends that Wide Voice's tariff rates are unlawful with respect to traffic where Wide Voice is both the terminating carrier and the tandem provider. It claims that in all instances in which Wide Voice is both the terminating and tandem provider it must charge the step-down rate of zero. It is Verizon's contention that benchmarking mandates such a result, because the price cap carrier to which Wide Voice must benchmark would also step-down.

Verizon's position is wrong. Put simply:

1. The step-down of incumbent LECs access rates are set forth at 47 C.F.R. §§ 51.907(g)(2) and (h), the application of which was determined by the FCC in the *Level 3 v. AT&T Order*.[50]
2. 47 C.F.R. § 61.26 requires Wide Voice and other CLECs to benchmark to the incumbent LEC rates.

First, the text of Section 51.901, read together with the *Level 3 v. AT&T Order*, mandates that the transition applies only to a price cap carrier's terminating services, not to a CLEC, a Wireless or VoIP provider.

Second, because Wide Voice's tariff properly benchmarks to the incumbent LEC's rates, Wide Voice's Tariff is lawful, valid, and complies with the Commission's regulations and orders. As demonstrated by the above diagrams, a price cap carrier providing tandem switching does not, in most instances, step-down when it is owned by or affiliated with the end office carrier.

Third, Verizon's position adopts an alternate reality in which benchmarking requires Wide Voice to assume the regulatory classification of a price cap carrier end office rather than benchmarking to the rate for the same tandem switching service, as the law requires. Verizon's interpretation of benchmarking to the tandem-switched access rate would require that Wide Voice (and every single other CLEC) assume the price cap carrier regulatory classification when that CLEC owns the end office and the tandem switch.

[50] *Level 3 Order*, 33 FCC Rcd at 2388 ¶ 1.

Contrary to Verizon's theory, benchmarking does not require that Wide Voice assume that regulatory classification and "become" a price cap carrier end office for the purposes of properly benchmarking to the proper tandem-switched transport rate. To force that obligation on Wide Voice, and by extension all other CLECs, in instances where the CLEC end office owns or is affiliated with the tandem switch carrier would result in discriminatory and unfair treatment. This is because, notably, an ILEC's affiliated non-price cap LEC end office is not obligated to assume this regulatory classification, and therefore, the ILEC is allowed to charge tandem switching and transport. Verizon is arguing, however, that when a CLEC is providing tandem switching and transport to its CLEC affiliate, unlike the ILEC in the tandem-switching diagram above, the CLEC cannot assess such charges. Verizon requests this inequitable treatment to benefit itself and its affiliates, who charge step-down rates consistent with Wide Voice.

Beginning on June 16, 2017, all Verizon ILECs (Bell Atlantic, NYNEX, etc.), via FCC Tariff No. 1 and FCC Tariff No. 11 ("Verizon ILECs' Tariffs"), separated tandem-switched transport rates into two categories in connection with "Step 6" of the CAF Order transition to bill and keep.[51] The Verizon ILECs' Tariffs identify a reduced rate (now zero) category of tandem-switched transport as applying to traffic "Terminating to Telephone Company End Offices." The full-rate category of tandem-switched

[51] WV_00262-63 (Verizon Telephone Companies, Tariff FCC No. 1); WV_00264-65 (Verizon Telephone Companies, Tariff FCC No. 11). *See also* WV_00266-68 (Verizon Telephone Companies, Tariff FCC No. 14); WV_00269-73 (Verizon Telephone Companies, Tariff FCC No. 16).

transport rates applies to all other traffic, including traffic destined for termination by the Verizon ILECs' non-price cap LEC affiliates. The Verizon ILECs' Tariffs define "Telephone Company" as the price cap ILEC issuers of the tariffs. The term "Telephone Company" excludes any Verizon affiliates that are not classified as price cap LECs. Thus, Verizon's ILECs charge full rates for all traffic terminated by the Verizon ILEC's non-price cap LEC affiliates. Wide Voice should be held to the same standards as Verizon. There is nothing unreasonable and unlawful about Wide Voice charging the same rates for the same services as Verizon and its non-price cap LEC affiliates.

Verizon's Formal Complaint should be denied in full. In Count I, Verizon alleges that Wide Voice's Tariff is an "unjust and unreasonable practice" under Section 201(b) of the Act. For all the reasons explained here, this Count is meritless and should be dismissed. Wide Voice did nothing "unreasonable" and certainly did not violate Section 201(b). The Commission's recent *Level 3 v. AT&T* Order affirms that Wide Voice's Tariff (and other CLECs tariffs) follows the Commission's interpretation of 47 C.F.R. § 51.907(g) .

In Count II, Verizon claims that if Wide Voice's Tariff is construed to require Wide Voice to charge rates consistent with Verizon's twisted stepdown/benchmarking interpretation, then Wide Voice assessed charges on Verizon in violation of that Tariff. This argument is nonsensical; Verizon does not identify any term in Wide Voice's Tariff that is ambiguous. Wide Voice's Tariff is clear on its face and Wide Voice charged Verizon in accordance with that Tariff. At worst, there are gaps on the law on this issue, Wide Voice's deemed lawful tariff stands, and Verizon must pay. As the FCC has

held, a streamlined tariff that takes effect without prior suspension or investigation is ***conclusively presumed to be reasonable*** and, thus, a lawful tariff filing during the period that the tariff remains in effect."[52] The FCC has made clear that, while it retains the authority to require modifications of deemed-lawful tariffs, those changes apply only on a prospective basis.[53]

D. The "Null Set" Argument is Another Red Herring.

Verizon claims that Wide Voice's Tariff is unlawful because it fails to set forth any circumstances under which Wide Voice is required to bill the "Affil PCL" rate, i.e., the step-down rate of zero. This is untrue, the Tariff requires Wide Voice to charge a rate of zero if there is traffic "traversing a [Wide Voice] Access Tandem switch when the terminating carrier is a [Wide Voice]-affiliated price cap carrier." Although Wide Voice does not currently have an affiliated price cap carrier end office, it could in the future. The Tariff does not articulate a "null set" as there could be circumstances under which a CLEC would provide tandem services to a subtending, affiliated price cap LEC. Wide Voice has made every effort to demonstrate its compliance with the step-down requirements and CLEC Benchmarking Rule, and its compliance is demonstrated by including that language in its Tariff.

Moreover, Wide Voice believes that at least two of the Commission's rules require it to articulate all conditions that could impact the rates articulated in its Tariff.

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[52] *Implementation of Section 402(b)(1)(A)*, 12 FCC Rcd 2170 ¶ 19 (FCC 1997) (emphasis added).
[53] *Id.* ¶ 20 ("tariff filings that take effect, without suspension, under section 204(a)(3) that are subsequently determined to be unlawful . . . would not subject the filing carrier to liability for damages for services provided prior to the determination of unlawfulness.").

Federal tariff regulation require that "[a]ll general rules, regulations, exceptions or ***conditions which in any way affect the rates named in the tariff must be specified***. A special rule, regulation, exception or ***condition affecting a particular item or rate must be specifically referred to*** in connection with such item or rate."[54] Moreover, "[i]n order to remove all doubt as to their proper application, all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations."[55]

Because the regulatory classification of the terminating carrier/provider and its affiliation with Wide Voice as the tandem switched transport provider determines which rates apply in Wide Voice's Tariff, it was appropriate to list the rates that would apply that are associated with the various potential scenarios listed in the Wide Voice Tariff.

There are carriers with filed tariffs that completely fail to address the circumstances under which reduced tandem switched access rates are changed. An AT&T affiliate CLEC, Teleport Communications Group ("TCG"), has included no provisions for a rate step-down *at all* even though it includes several pages of terminating tandem and transport rates.[56] So, when Verizon asserts, incorrectly, "Wide Voice claims that it is never subject to the bill-and-keep rule in Step Seven," the

[54] 47 C.F.R. § 61.54(j).
[55] *Id.* § 61.2.
[56] WV_0000251-55 (TCG, Tariff FCC No. 2, 96th Revision); WV_000256-57 (TCG, Tariff FCC No. 2, 97th Revision); WV_000258-59 (TCG, Tariff FCC No. 2, 98th Revision); WV_000260-62 (TCG, Tariff FCC No. 2, 99th Revision).

Commission does not need to look any further than the publicly filed tariffs, that Verizon does not contest, that do not contain a single reference to step-down rates.

E. In The Alternative, The Step-down/Benchmarking Requirements Are Unsettled.

Although Wide Voice believes that its Tariff rates are in full compliance with the manner in which the Benchmarking Rule requires CLEC to step-down rates for tandem switched access charges, at very worse, the current state of the law is unsettled. Under such circumstances, Wide Voice's Tariff is not void *ab initio*.[57]

Verizon asks the Commission to find that section 3.6.4 of Wide Voice's tariff is void *ab initio* because it is not in compliance with the Step 6 and Step 7 step-downs of 47 C.F.R. § 51.907. As explained above, Verizon is mistaken concerning the obligations of benchmarking CLECs vis-à-vis the Section 51.907 step-downs. But even if the Commission decides to interpret Section 51.907 as Verizon requests, at most the application should be prospective and require Wide Voice (and other CLECs with the same tariff language) to file revised tariffs that follow the Commission's ruling.

The due process clause gives parties the right to "fair notice" before a federal regulator may deprive it of property.[58] "[W]here the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability."[59] The FCC has the authority to

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[57] *See Global NAPs, Inc. v. FCC*, 247 F.3d 252, 260 (D.C. Cir. 2001) (citing *ICC v. Am. Trucking Ass'ns*, 467 U.S. 354 (1984)).
[58] *Gen. Elec. Co. v. U.S. EPA*, 53 F.3d 1324, 1328 (D.C. Cir. 1995).
[59] *Id.* at 1328-29.

retroactively invalidate a tariff (i.e., declare it void *ab initio*) in "furtherance of a 'specific statutory mandate' to which the [tariff provision] was 'directly and closely tied.'"[60] When the law is ambiguous or unclear, however, there is no "specific statutory mandate" to be furthered, and the FCC cannot declare a tariff void *ab initio*. Here, at most, the law was not clear when Wide Voice filed its tariff. Therefore, the Commission may not declare Wide Voice's tariff void *ab initio*, and the most it can do is require Wide Voice to operate under a new tariff moving forward.

Many of the CLECs filed access tariffs nearly two years ago in response to the Step 6 and Step 7 rate reductions are identical, or substantially similar to, Wide Voice's filings.[61] Further, as discussed above, AT&T's affiliate CLEC, TCG, has included no provisions for a rate step-down *at all* even though it includes several pages of terminating tandem and transport rates.[62]

Level 3, on the other hand, adopts the wording of the ILEC tariffs such that it can retain full tandem and transport rates if it were, for example, to be the tandem provider for its CenturyLink price cap ILEC affiliates.[63] If nothing else, the disparate handling of the step-down and benchmarking requirements among the CLECs illustrates the requirements have been unclear to many parties.

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[60] *Global NAPs, Inc.*, 247 F.3d at 260 (citing *ICC*, 467 U.S. 354).
[61] For example, see WV_000250 (Onvoy, LLC, Tariff FCC No. 1), WV_000249 (Neutral Tandem, Inc., Transmittal Letter No. 16 and Revised Tariff FCC No. 2), and WV_000274 (West Telecom Services, LLC, Tariff FCC No. 1).
[62] WV_000251-61.
[63] WV_000244-48 (Level 3 Communications, LLC, Tariff FCC No. 4 (as revised)).

Thus, the scenario that Verizon believes is already covered by the intersection of the step-down requirements with the Benchmarking Rule in fact could pose a question that the Commission has not resolved. As AT&T correctly identified in its submission in the *Level 3 v. AT&T* proceeding, the *Transformation Order* "did not set out to address every issue or transition every element of the current system to bill-and-keep."[64] The Commission should not agree with Verizon's twisted interpretation of the Benchmarking Rule; as the tariffs of many other CLECs that offer competitive tandem and transport services show, Verizon is an outlier in its interpretation. While the Commission can change its interpretation prospectively if it provides appropriate and lawful rationale, Verizon provides no explanation that would justify a finding that Wide Voice has violated Section 201(b) or must be liable retroactively. The truth is all originating carriers, including Verizon, pay the same tandem charges to ILECs as well as benchmarking CLECs (including Wide Voice).

Finally, it is worth noting that the Commission's Staff provided price cap LECs with informal guidance on the step-downs required by Section 51.907(g).[65] The Commission staff confirmed to the price-cap carriers that the step-down in Section

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[64] WV_000062 (AT&T Br. in Supp. of Answer at 30).

[65] Petition of Century Link for Limited Stay of *Transformation Order* Years 6 And 7 ICC Transition – As It Impacts A Subset Of Tandem Switching And Transport Charges at 2-3, 6 ("*CenturyLink Stay Petition*"), *Connect America Fund, et al.*, Docket Nos. 10-90 (filed Apr. 11, 2017) (price cap "carriers have had a number of discussions within customary industry discussion groups formed to assist carriers as they anticipate the complexities associated with their annual tariff filings and those groups have reached-out to Commission staff, as is customary, for related guidance.").

51.907(g) does not apply when the price cap carrier does not operate both the terminating tandem switch and the terminating end office switch.[66]

F. The Dispute Provisions Are Industry Standard.

Unrelated to the issue of "Benchmarking" and Verizon's alleged dispute, Verizon aims to avoid scrutiny for its unlawful self-help by claiming that Wide Voice's dispute provisions, in place since 2015, are unlawful. Wide Voice's dispute language matches – word-for-word – long-accepted, FCC-approved, industry standard language. Verizon challenges sections 2.1.4(A) and (B), and, in a bizarre line of reasoning, identifying the *Northern Valley Order*[67] and the associated facts *in support of* their position. The opposite is true. The Northern Valley tariff case fully supports Wide Voice's dispute provisions.

As Verizon is aware, various provisions in the Northern Valley tariff filed on July 8, 2010, were found to be unlawful.[68] These are not the tariff provisions that Wide Voice has included in its tariff. Again, as Verizon is aware, Northern Valley re-filed its tariff on July 26, 2011, in response to the *Northern Valley Order*.[69] After drafting proposed revisions, Northern Valley's counsel shared those proposed revisions with two members of the FCC's Wireline Competition Bureau, Pricing Policy Division, which has regulatory authority over CLEC access service tariffs. Those individuals requested minor modifications to portions of the tariff, but did not request any modifications to

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[66] *See id*.
[67] *N. Valley Order*, 26 FCC Rcd 10780.
[68] *See id.*
[69] *See* WV_000146 (Decl. of G. David Carter, *Great Lakes Commc'n Corp. v. AT&T Corp.*, No. 5:13-cv-04117-DEO (July 8, 2014)).

the revised dispute-resolution provisions.[70] Ultimately, the Chief of the Pricing Policy Division, who concluded that the revised provisions were suitable for filing, reviewed all of the proposed revisions.[71] Northern Valley filed its tariff revisions on July 26, 2011. Those revisions contained the identical dispute language at issue here. Thus, Wide Voice's disputed language mirrors vetted and approved dispute language that has been in effect for almost 8 years and under no circumstances is unreasonable.

III. CONCLUSION

For the foregoing reasons, the Commission should reject Verizon's claims and dismiss the Complaint.

DATED: July 3, 2019

WIDE VOICE, LLC

By Its Attorneys,

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[70] WV_000148-49, WV_000169-89 (*Id.* ¶¶ 7-9 & Exs. C-E).
[71] WV_000149 (*Id.* ¶ 10).